FILED
January 9, 2019
OFFICE OF APPELLATE COURTS

CASE NO. A18-0799

STATE OF MINNESOTA
IN COURT OF APPEALS

Save Our Schools Committee, an unincorporated organization of individuals who are citizens of and reside within Independent School District No. 861,

Relator,

v.

Independent School District No. 861, (Winona, Minnesota, Area Public Schools),

Respondent.

RESPONDENT'S MOTION TO DISMISS AND MEMORANDUM OF LAW IN SUPPORT OF DISMISSAL

MOTION

PLEASE TAKE NOTICE that Respondent Independent School District No. 861, Winona Public Schools ("District") hereby moves this Court for an Order of Dismissal of the above-captioned appeal as moot.

INTRODUCTION

Relator Save Our Schools Committee brought this appeal to challenge the decisions of the District to close Madison Elementary School and Rollingstone Community School (the "Schools"). Relator requested that this Court require the District to reopen the Schools. While this appeal was pending, and after briefing was submitted by the parties, the District conveyed fee title in the properties that formerly housed the Schools to individuals or entities who are not before the Court or associated with either of

the parties. Because the District no longer owns the facilities that housed the Schools, the Schools cannot be reopened. As a result, this appeal cannot result in effective relief and therefore must be dismissed as moot.

FACTS

On March 29, 2018, the District's School Board adopted resolutions to close the Schools. Docs. 108, 111 and 112.[1] Those resolutions did not authorize the sale of the properties that the Schools occupied. To the contrary, they explicitly disclaimed any action regarding the sale of the Properties.[2] *Id.*

Relator filed its Petition for a Writ of Certiorari on May 22, 2018, and served the Writ of Certiorari on the District the following day. *See* Relator's Petition for Writ of Certiorari. On or about May 24, 2018, Relator submitted a request for a stay of the decisions to close the Schools to the District. *See* Dahman Ex. U. The School Board considered Relator's request at its meeting on June 7, 2018, and voted to deny Relator's request. Dahman Ex. DD. On June 11, 2018, Relator filed a Motion for a Stay with this Court, asking "the Court to order that the school buildings that were closed not be sold by the School District pending the resolution of this case." Relator's Motion for Stay, at 1.

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[1] Documents in the Record are cited as "Doc." followed by the document number and bates-stamped page number where appropriate. Exhibits to the June 19, 2018, Affidavit of Rich Dahman in Opposition to Relator's Motion for Review of Respondent's Denial of Application for Stay of Action are cited as "Dahman Ex." Documents filed with this Court as part of this appeal are identified by name and date as precisely as possible.

[2] There is no basis to distinguish between these two properties for purposes of this litigation. As a result, for purposes of clarity, they will be referred to as the "Properties" herein.

On July 3, 2018, this Court issued an Order denying Relator's Motion for a Stay. *In re Matter of Proposed Closing of Rollingstone Community School*, Order, A18-0799 (Minn. App. July 3, 2018). In relevant part, the Court held that, pursuant to Minn. R. App. P. 108.02, the Court could not issue a stay of any sale of the Schools because Relator had not requested that relief from the District first. *Id.* at 2. Further, the Court determined that "[a]ny decision to sell the buildings will be separate from the school-closing decisions that are the subject of this certiorari appeal" and that there is "no authority for this court to directly stay any such sales." *Id.*

On September 5, 2018, the District entered into a Purchase Agreement to sell Rollingstone School. Affidavit of Nathan B. Shepherd in Support of Motion for Dismissal, ("Shepherd Ex.") Exhibit A. Similarly, the District entered into a Purchase Agreement to sell Madison School on October 15, 2018. Shepherd Ex. B. These Purchase Agreements were entered into with the full authority of the School Board, and fee title to the Rollingstone and Madison School Properties was conveyed to their respective buyers by Warranty Deed on October 1, 2018 and December 13, 2018. Shepherd Exs. C and D.

ARGUMENT

Relator asked this Court to reverse the District's decision to close the Schools and to "remand the case to ISD 861 with instructions to reopen the schools." Relator's August 20, 2018, Appellate Brief, at 38. As the District no longer owns the properties, however, the Court cannot grant effective relief, rendering Relator's appeal moot. Likewise, the decisions to sell the Properties are not properly before the Court and, consequently, the Court lacks separate jurisdiction over those sales. For these reasons, the Court should dismiss Relator's action for lack of jurisdiction.

I. THIS APPEAL IS MOOT BECAUSE EFFECTIVE RELIEF IS IMPOSSIBLE.

A. Standard for Mootness.

"[W]hen, pending appeal, an event occurs that makes a decision on the merits unnecessary or an award of effective relief impossible, the appeal should be dismissed as moot." *In re Application of Minnegasco*, 565 N.W.2d 706, 710 (Minn. 1997); *see also Christopher v. Windom Area Sch. Bd.*, 781 N.W.2d 904, 911 (Minn. App. 2010) (similar). The doctrine requires "a comparison between the relief demanded and the circumstances of the case at the time of decision in order to determine whether there is a live controversy that can be resolved." *Minnegasco*, 565 N.W.2d at 710. "Mootness is a jurisdictional issue that may be raised at any time." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 84 (Minn. App. 2012). "If there is no injury that a court can redress, the case must be dismissed for lack of justiciability." *Id.*

B. The Court's Jurisdiction is Limited to a Review of the Decisions to Close the Schools, not the sales of the Properties.

1. The Property Sales are Not Within the Subject of this Appeal.

This Court previously noted that Relator obtained a Writ of Certiorari for the "[a]ppeal of [a] decision of [the District] to close two elementary schools within the district pursuant to Minn. Stat. § 123B.51." *In re Matter of Proposed Closing of Rollingstone Community School*, Order, A18-0799 (Minn. App. July 3, 2018). As a result, "[a]ny decision to sell the buildings will be separate from the school-closing decisions that are the subject of this certiorari appeal." *Id.* at 2.

The decisions to sell the Properties are legally and procedurally separate from the decisions regarding the closure of the Schools and are therefore not within the legal scope of this matter or the instant jurisdiction of the Court.

In obtaining the Writ of Certiorari that is the basis of this appeal, Relator was required to "definitely and briefly state *the decision, judgment, order or proceeding* that is sought to be reviewed." Minn. R. App. P. 115.03, subd. 1 (emphasis added). "A copy of *the decision* and the statement of the case pursuant to Rule 133.03 shall be included in an addendum prepared as prescribed by Rule 130.02." *Id.* (emphasis added). Relator is therefore limited in this appeal to requesting review of "the decision" that it identified. In this case, Relator identified the District's decisions to close the Schools, and a Writ of Certiorari was issued for the review of those March 29, 2018, decisions. *See* Writ of Certiorari. The sales of the Properties did not occur until several months later. *See* Shepherd Exhibits A to D. Consequently, those sales are "separate from the school-

closing decisions that are the subject of this certiorari appeal." As the Court has not issued a valid Writ of Certiorari to review the sales of the Properties, the Court cannot consider those sales in this case. *See Dokmo v. Indep. Sch. Dist. No. 11, Anoka-Hennepin*, 459 N.W.2d 671, 676 (Minn. 1990) (holding that timely issuance of a Writ of Certiorari is a "jurisdictional prerequisite to judicial review") (internal quotation omitted); *In re Termination of Gay*, 555 N.W.2d 29, 31 (Minn. App. 1996) (holding that "relator must obtain and serve the issued writ within the appeal period to vest jurisdiction in this court").

Moreover, the decisions to sell the Properties were made after the record for this appeal was determined. *See* Minn. R. App. P. 110.01. There has been no motion to supplement or modify the record, indicating that Relator was satisfied that the record submitted by the District was complete. *See* Minn. R. App. P. 110.05. The record, however, contains nothing related to the sales of the Properties. Accordingly, there is nothing on which the Court could base a review of the decisions to sell the Properties.

The District's dispositions of the Properties are not part of this appeal. Relator did not appeal those decisions or move to amend the record to include reference to those decisions. Therefore, as it has already recognized, the Court's review is limited to the decisions to "close" the Schools, not sell the Properties.

2. <u>The Property Sales are Not Reviewable on a Writ of Certiorari.</u>

Regardless of whether Relator sought to put the decisions to sell the Properties before the Court, this Court lacks jurisdiction to review those decisions in this Certiorari action. Only a limited class of quasi-judicial decisions are reviewable through the

extraordinary remedy of a Writ of Certiorari. *See Dead Lake Ass'n, Inc. v. Otter Tail Cnty.*, 695 N.W.2d 129, 134 (Minn. 2005). Sales of now-closed school buildings are not part of that class.

Whether a decision is quasi-judicial in nature is determined by the presence of three factors: "(1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim." *Citizens Concerned for Kids v. Yellow Med. E. Indep. Sch. Dist. No. 2190*, 703 N.W.2d 582, 585 (Minn. App. 2005) (quotation omitted). If any of these factors are not satisfied, the decision is legislative or administrative and Certiorari is not available. *Id.* Notably, "Certiorari in Minnesota is not a common law writ, but a statutory remedy, and the statutory provisions are strictly construed." *Heideman v. Metro. Airports Comm'n*, 555 N.W.2d 322, 323 (Minn. App. 1996).

The decision to close a school is quasi-judicial and reviewable on a Writ of Certiorari. *See Citizens Concerned for Kids,* 703 N.W.2d at 584. A school district decision to sell property, however, is not a quasi-judicial decision even when the property is the former location of a now-closed school. Rather, the District's decisions to sell unused property are part of "the duty and the function of the district to furnish school facilities to every child of school age residing in any part of the district." Minn. Stat. § 123B.02, subd. 2. This statute "simply charges the Board with the general responsibility of furnishing school facilities and commits the means of fulfilling that responsibility to its sound discretion." *W. Area Bus. & Civic Club v. Duluth Sch. Bd. Indep. Dist. No. 709*, 324 N.W.2d 361, 365 (Minn. 1982) (addressing a precursor to

section 123B.02). That being said, "no specific statutory standards or procedures govern the discharge of a school board's general responsibility of furnishing school facilities." *Citizens Concerned for Kids*, 703 N.W.2d at 584–85; *see also W. Area Bus. & Civic Club*, 324 N.W.2d at 365 ("No specific statutory standards or procedures govern the discharge of this duty."). Because no specific standards govern a decision to sell school district property, the sales of these Properties are not quasi-judicial decisions that are reviewable by a Writ of Certiorari.

Further, there are no procedural or substantive requirements for the sale of District property, unlike the requirements for a school closure. *Compare* Minn. Stat. § 123B.51, subd. 1 *with* Minn. Stat. § 123B.51, subd. 5. The School Board instead has the statutory authority to "sell or exchange schoolhouses or sites, and execute deeds of conveyance thereof," pursuant to Minn. Stat. § 123B.51, subd. 1, and a "general obligation to secure the best available price and financial terms on behalf of the district." Minn. Op. Att'y Gen. 622-I-8, 1983 WL 180937 (September 9, 1983). Given that the decisions to sell the Properties were not subject to any specific standards, the result of any investigation, or the resolution of a disputed claim, they are not quasi-judicial decisions.

3. The Property Sales are Not Within the Court's Jurisdiction in this Case.

Because the dispositions of the Properties are not and cannot be part of this appeal, the sales of the Properties are beyond the jurisdiction of this Court. "The nature of judicial review in a certiorari proceeding is limited." *Moe v. Indep. Sch. Dist. No. 696, Ely, Minn.*, 623 N.W.2d 899, 902 (Minn. App. 2001). "Through certiorari, constitutional guarantees are protected when a reviewing court exercises only limited jurisdiction over

the decisions of school boards. Separation of powers principles dictate the continued adherence to limited review by writ of certiorari, and the standards for reviewing school board decisions properly recognize the limited judicial role." *Dokmo*, 459 N.W.2d at 674. With that limited scope of review in mind, "review by certiorari is not available" where a school district's decision is not quasi-judicial. *Bena Parent Ass'n v. Indep. Sch. Dist. No. 115, Cass Lake*, 381 N.W.2d 517 (Minn. App. 1986). Where this Court's jurisdiction is based on a Writ of Certiorari, it has no jurisdiction to address questions related to legislative or administrative decisions. *Dead Lake Ass'n, Inc.*, 695 N.W.2d at 135 (concluding that the Court of Appeals lacked subject-matter jurisdiction where a party sought review of a non-quasi-judicial decision through a Writ of Certiorari); *see also Handicraft Block Ltd. P'ship v. City of Minneapolis*, 611 N.W.2d 16, 20 (Minn. 2000) (noting, as a jurisdictional matter, that only judicial and quasi-judicial actions are reviewable by Writ of Certiorari) (citing *Minnesota Ctr. for Envtl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999)); *Tipka v. Lincoln Int'l Charter Sch.*, 864 N.W.2d 371, 373 (Minn. App. 2015) (dismissing appeal brought by Writ of Certiorari on the basis of a lack of jurisdiction). Given the limited jurisdiction of the Court on a Writ of Certiorari and the limited issue raised in Relator's petition, the sales of the Properties are beyond the jurisdiction of this Court.

C. The Court Cannot Grant Effective Relief in this Case.

As the only issue before the Court is the School Board's closure of the Schools, the relief available in a Certiorari review of those decisions is limited to an order to reopen the schools or remand for further proceedings. *See, e.g., Kelly v. Indep. School*

Dist. No. 623, 380 N.W.2d 833, 838 (Minn. App. 1986) (remanding for further proceedings). Indeed, the only relief sought by Relator in this matter is an order directing the District to reopen the schools. Relator's Appellate Brief, at 38. Because the District no longer owns the Properties—and given the narrow issue before the Court—the Court cannot grant effective relief in this case.

The District cannot reopen the Schools, as it does not own the Properties or the buildings that formerly housed the Schools. Shepherd Ex. C and D. The Purchase Agreements conveying title to the Properties do not allow the District to cancel or rescind the property transfers. Shepherd Ex. A and B. The District has no ability to reopen the Schools.[3]

In order to grant the relief sought by Relator at this time, the Court would have to exceed its jurisdiction to review the sales of the Properties and craft an Order that binds the purchasers of the Properties, who are not parties to this appeal and over whom the Court has neither personal nor subject-matter jurisdiction in this case. There is no authority for such extra-judicial remedy fashioning by this Court nor is there any reason to create such authority in this case. Indeed, "[t]he function of the court of appeals is

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[3] From the outset, Relator recognized that the sale of the Properties would "preclude any meaningful relief through this appeal or through election of a new school board." Relator's May 22, 2018, Statement of the Case, at 3. Relator chose not to pursue these available courses of action that may have prevented the sale of the Properties prior to review of the closure decision Relator could have sought a stay of the decision to close the Schools (as opposed to the sale of the Properties) in this Court, or an injunction for that purpose in district court. Having made a tactical or strategic decision not to make a legitimate attempt to prevent the sale of the Properties, Relator must now live with the consequences of that decision.

limited to identifying errors and then correcting them." *834 VOICE v. Indep. Sch. Dist. No. 834, Stillwater*, 893 N.W.2d 649, 655 (Minn. App. 2017) (quotation omitted).

In an analogous case, a relator challenged the propriety of permits for the construction of a bridge and sought to prevent the bridge from being built. *See Moore v. McDonald*, 165 Minn. 484, 485, 205 N.W. 894, 895 (1925). The *Moore* court held that the construction of a bridge mooted the appeal. *Id.* Specifically, the court held that, because the bridge had "been constructed and completed. . . . A reversal of the order, and the issuance at this time of the temporary injunction asked for, would accomplish nothing." *Id.* As in the *Moore* case, the ultimate goal of Relator's appeal in this case is practically unavailable and, consequently, the appeal is moot.

Indeed, courts often hold that the termination of property interests renders an appeal affecting real property moot. *See, e.g., Dean v. City of Winona*, 868 N.W.2d 1 (Minn. 2015) (holding that property owner's sale of property rendered challenge to ordinance affecting property moot); *see also Chaney v. Minneapolis Cmty. Dev. Agency*, 641 N.W.2d 328, 335 (Minn. App. 2002). Simply put, where the property subject to an appeal is sold, the appeal relating to the property may be moot because there is no interest to be had or relief to be granted.

Relator asks this court to determine that there was not a sufficient evidentiary basis to close the Schools or that the procedure that resulted in the closures was defective. In order to grant relief to Relator, then, this Court would overturn those decisions and require that the Schools be reopened. But as a practical matter, there are no buildings for

the Schools to occupy and the conveyance of the Properties is not before the Court on this Certiorari appeal.

Further, even if the Court remanded this matter for further development of the record, effective relief is not possible because the circumstances of the District are not the same as when the decisions to close the Schools were reached. On remand, the District would have to consider the circumstances at the time of the renewed decision-making process, including the absence of any appropriate facilities for reopened Schools. This virtually necessitates that the District make another determination to close the Schools. The District cannot therefore be required to remake its decisions under the same conditions that existed at the time that it made the school-closing decisions that are the subject of this appeal. Because the District cannot be required to reopen Schools that have no physical facilities to occupy and cannot be required to reconsider a decision that was based on conditions that no longer exist, effective relief cannot be granted.

II. THE EXCEPTIONS TO THE MOOTNESS DOCTRINE DO NOT APPLY IN THIS CASE.

In addition, this matter does not fit within the recognized exceptions to the mootness doctrine: (1) "capable of repetition, yet likely to evade review"; or "functionally justiciable and of statewide significance." *Dean*, 868 N.W.2d at 5 (quotations omitted).[4]

[4] A third exception to the mootness doctrine is if the decision under review "imposes 'real and substantial limitations,' courts will presume that collateral consequences attach." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 84 (Minn. App. 2012). Nothing in the decision to close the Schools at issue has any collateral consequences on the parties, as Relator is an unincorporated association with no property or legal rights

A. This Issue is Not Capable of Repetition but Evading Review.

The exception to the mootness doctrine for issues that are "capable of repetition, yet evading review" is "limited to the situation where two elements are combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005). "Traditionally, cases that have been found to evade review involve disputes of an inherently limited duration, such as prior restraints on speech." *Dean*, 868 N.W.2d at 5 (noting other examples of pretrial bail issues, judicial gag orders, administration of neurological medication with a guardian's consent, and three-day hold orders for mental illness).

There is nothing inherent in a school-closing decision that causes the challenged condition to be of limited duration. A decision enjoining a party from speaking at a specific moment, for example, cannot meaningfully be reviewed once that moment has passed. But a school-closing decision is not ripe for review until it happens and is a permanent and final decision in the absence of an appeal. That decision can be reversed at any time after the fact, unlike the administration of medication or the institution of a hold order for mental illness. There is nothing inherent in that decision that prevents a subsequent opportunity for a review after the decision is made, as illustrated by the numerous school-closing appeals that have been fully considered by this Court and the

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and Respondent is a political body with independent authority that will not be affected by the outcome of this appeal.

Supreme Court. *See, e.g. W. Area Bus. & Civic Club*, 324 N.W.2d 361 (Minnesota Supreme Court addressed school-closing case); *834 VOICE*, 893 N.W.2d 649; *Citizens Concerned for Kids*, 703 N.W.2d at 587; *Concerned Citizens for the Pres. of Indep. Sch. Dist. No. 712 v. Mountain Iron-Buhl Indep. Sch. Dist. No. 712*, 431 N.W.2d 601, 604 (Minn. App. 1988) (addressing a school-closure dispute where the school building continued to house one class, "some administrative offices, and a few extra-curricular activities in the gymnasium"); *Bena Parent Ass'n*, 381 N.W.2d 517.

Relator will likely argue that the sales of the Properties demonstrates that the decisions to close the Schools fits within this exception. But the District's sales of the Properties are separate from the school-closing decisions and are not inherent in the action that is subject to the Court's jurisdiction here. The District remained free to dispose of the Properties as it saw fit, even with this pending appeal, as would any other school district involved in a school-closing appeal. While the District determined to dispose of these particular Properties, there is nothing inherent in the school-closing decisions that required that outcome. Other school districts in other school-closing cases may make different decisions regarding the disposition of their property, including to retain and repurpose the property, to let the property lie fallow, or to dispose of the property. Thus, there is nothing inherent about a school-closing decision that causes it to be of limited duration, even though the disposition of the Properties occurred during the pendency of the appeal in this particular case.

Finally, there is no "reasonable expectation that a complaining party would be subjected to the same action again." *Dean*, 868 N.W.2d at 5. The circumstances that led

the District to close the Schools are specific to those decisions, including the enrollment at the time, the maintenance needs of the buildings involved, and the educational opportunities offered by the Schools and the remaining educational facilities. Those circumstances are fluid and ever-changing, such that any future decisions regarding school closings or openings would be made on an entirely different set of facts and circumstances. Moreover, the facts that led the District to close these Schools do not apply in any uniform manner to any other school-closing dispute, as each District encounters a unique blend of challenges and opportunities that may lead it to make a decision to close schools or sell properties. Thus, this is not the kind of case where a certain class of individuals are certain to encounter the same decision or result each time they reach a definitive inflection point. This case, therefore, does not fit within the exception of being capable of repetition but evading review.

B. This Case is Not Functionally Justiciable and Significant Statewide.

Because this case is limited to the decisions to close the Schools based on the particular facts at issue in the District, this case does not present a "functionally justiciable . . . question of statewide significance that should be decided immediately." *Dean*, 868 N.W.2d at 6 (quotation omitted). "A case is functionally justiciable if the record contains the raw material (including effective presentation of both sides of the issues raised) traditionally associated with effective judicial decision-making." *Id.* (quotation and alterations omitted). Courts "apply this exception narrowly." *Id.* Cases fitting this exception have some "urgency," such that they "present an issue that must be decided immediately." *Id.* at 7 (quotation omitted).

Issues that have been found to satisfy this exception to the mootness doctrine are those that reoccur in similar factual scenarios with some level of certainty. For example, the "applicability and constitutionality" of a statute that "affects all persons who apply for or receive general assistance or MSA benefits and who also have a post-July 1, 1997, felony drug conviction" would reoccur and have statewide significance. *See Verhein v. Piper*, 917 N.W.2d 96, 100 (Minn. App. 2018). Likewise, the authority of a guardian to remove life-support for a ward and an election procedure used in multiple Minnesota cities reached this threshold. *See In re Guardianship of Tschumy*, 853 N.W.2d 728, 740–41 (Minn. 2014) (life support); *Kahn*, 701 N.W.2d at 823 (election procedure).

While this case is functionally justiciable, in that the briefing and evidentiary submissions related to the school-closing issue are complete, the circumstances that led the District to decide to close the Schools in this case are situationally unique to the District. Nothing about those facts are applicable to other school-closing decisions, as each District will have its own set of enrollment statistics, cost analysis, and educational and physical needs. Those facts are not procedural, such that the application of a legal holding can readily be transposed across other school districts for future school-closing decisions. Nor are the procedural arguments made by Relator of sufficient gravity to warrant a final determination despite the absence of any potential relief. Given that the evidentiary underpinnings of the District's decisions to close the Schools are unique and specific to this case, the case is not of statewide significance such that this exception to the mootness doctrine applies.

CONCLUSION

Because effective relief for Relator is practically and legally impossible, and because no exception applies, Relator's appeal is moot and must be dismissed.

Respectfully Submitted,

RATWIK, ROSZAK & MALONEY, P.A.

Dated: 1/9/19

By: _____

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